

IN THE
MISSOURI SUPREME COURT

STATE OF MISSOURI,)	
)	
Respondent,)	
)	
vs.)	No. SC93348
)	
)	
SHARNIQUE N. JONES,)	
)	
Appellant.)	

APPEAL TO THE MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
TWENTY-FIRST JUDICIAL CIRCUIT, DIVISION TWENTY
THE HONORABLE COLLEEN DOLAN, JUDGE

APPELLANT’S SUBSTITUTE REPLY BRIEF

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JURISDICTIONAL STATEMENT

Appellant adopts and incorporates by reference the Jurisdictional Statement from her original Substitute Brief.

STATEMENT OF FACTS

Appellant adopts and incorporates by reference the Statement of Facts from her original Substitute Brief.

ARGUMENT

IV.

The trial court plainly erred in admitting Sharnique’s extrajudicial statement into evidence as substantive evidence of guilt of murder in the second degree of Shaquir, because this deprived Sharnique of her right to due process of law under the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution, in that there was no independent proof of the *corpus delicti* of the offense -- that Shaquir died as a result of homicide rather than from natural causes. Because Sharnique’s statement could not be used as substantive evidence, the evidence was not sufficient to find her guilty beyond a reasonable doubt of the murder. Furthermore, any change in the standard of analysis by this Court should not be applied to Sharnique; to do so would violate due process.

Under *State v. Madorie*, 156 S.W.3d 351, 355 (Mo. banc 2005), extrajudicial admissions of the defendant are not admissible in the absence of independent proof of the corpus delicti. “Slight” corroborating facts are sufficient – the corroboration goes to the *statement*. *Id.* at 356. This is a logical and well-reasoned analysis:

1. There must be sufficient evidence of the body of the crime. In a homicide, that is (a) proof of the death of the victim; (b) evidence that the criminal

agency of another was the cause of the victim’s death. *State v. Edwards*, 116 S.W.3d 511, 544 (Mo. banc 2003).

2. There must be corroboration of the statement. (“Slight”). *Madorie*, 156 S.W.3d at 356.

3. The statement becomes admissible and can be used to analyze whether the defendant has been proven guilty beyond a reasonable doubt. The state is not required to present independent proof of the defendant’s criminal agency, outside of the defendant’s admissions, to establish the corpus delicti. *Id.*

Part of the confusion in this area is illustrated by the above: although courts speak of “independent proof of the corpus delicti,” they then speak of admission of the confession “to establish the corpus delicti.” *See, Madorie*. It seems that, once sufficient evidence is produced independent of the statement, and the statement is sufficiently corroborated and admissible, then the statement indeed becomes part of the quantum of proof, if not the corpus itself. “The corpus delicti doctrine ensures that a defendant’s conviction is not based upon an uncorroborated confession or incriminating statement.” *State v. Chappell*, 236 P.3d 1176 (Ariz. 2010) (citations omitted). Rather, the state must present sufficient evidence to permit a reasonable inference that the alleged injury to the victim was caused by criminal conduct rather than by suicide or accident. *Id.*

Respondent advises this Court to replace Missouri’s rule with the federal “trustworthiness” doctrine, as if it is the wave of the future. But an examination of

other jurisdictions reveals rules as varied as petals on the wind.¹ Almost all states have some version of the corpus delicti rule.² The State of Georgia even had a statute at one time, OCGA Section 24-3-53, which prohibited a conviction based upon a confession uncorroborated by other evidence.³ See, **Barnes v. State**, 396 S.E.2d 207, 208 (Ga. 1990). “[A]ll American jurisdictions follow some version of the *corpus delicti* rule.” **State v. Smith**, 669 S.E.2d 299 (N.C. 2008).

The difference in Missouri’s rule and the trustworthiness rule propounded by respondent is in quality more than quantity. The **Opper**⁴ corroboration rule creates an alternative means to prove the corpus delicti. **State v. Dow**, 227 P.3d

¹ Counsel attempted to chart all fifty States for this Court but gave up the effort as impossible – the standards and variations are simply not quantifiable.

² “With the exception of Massachusetts, every other state requires more than an extra-judicial confession from the defendant to support a conviction. All jurisdictions agree that the prosecution has the burden of proving the corpus delicti but confusion abounds on the exact nature and extent of that burden. ... Commentators have decried the confusion.” **State v. Curlew**, 459 A.2d 160, 164 (Maine 1983).

³ Repealed by Laws 2011, Act 52, § 2, eff. January 1, 2013. Ga. Code Ann. § 24-3-53 (West).

⁴ **Opper v. United States**, 348 U.S. 84 (1954) (requiring corroborative evidence independent of the defendant’s confession to support the conviction).

1278, 1281 (Wash. 2010). It does not, however, permit a defendant's confession to be the sole evidence used to support a conviction. *Id.* This is because, in many States, the corpus delicti rule is not simply a rule of *admission* but a rule of *sufficiency* – and in some States, *both*. See, *id.*

Where the trustworthiness rule has been adopted (see Resp. br., e.g., *People v. LaRosa*, 293 P.3d 567 (Colo. 2013)), the prior rule seems universally to have been one of sufficiency rather than admissibility.⁵ Where admissibility was the rule, as in Missouri, States have rejected the trustworthiness standard.⁶ Perhaps if this Court adopts respondent's analysis and the trustworthiness rule, then the rule in Missouri should become a sufficiency standard rather than an admissibility one.⁷

⁵ See, *State v. Castillo*, 614 P.2d 756 (Alaska 1980); *Wright v. State*, 958 A.2d 188 (Del. 2008); *State v. Wilson*, 248 P.3d 315 (N.M. 2010); see Resp. br. In *LaRosa* itself, the change was applied only prospectively. 293 P.3d at 579. To do otherwise would violate due process. *Id.*

⁶ See, *Burks v. State*, 613 So.2d 441 (Fla. 1993); *Willoughby v. State*, 552 N.E.2d 462 (Ind. 1990); *People v. McMahan*, 548 N.W.2d 199 (Mich. 1996); *State v. Arrington*, 858 P.2d 343 (Mont. 1993).

⁷ Most states analyze the traditional rule as requiring corroboration of the *crime* rather than the *confession*. See, *State v. Mauchley*, 67 P.3d 477, 482 (Utah, 2003). Since Missouri requires corroboration of the confession, the trustworthiness

There are cogent reasons for maintaining the corpus delicti rule in its present form. Respondent would throw out the baby with the bathwater and throw out a nice clear standard (which is already almost impossible to meet – as it should be), in a case in which there is insufficient corroboration under either standard. The rule exists, in large part, to protect against false confessions.⁸ This is especially critical in a case such as this where the confession was given under interrogation, rather than volunteered. *See, State v. Tiffany*, 88 P.3d 728 (Idaho 2004); *Smith*, 669 S.W.3d at 592 (The rule ensures that confessions that are “erroneously reported or construed ... , involuntarily made ... , mistaken as to law or fact, or falsely volunteered by an insane or mentally disturbed individual” cannot be used to falsely convict a defendant).

In *People v. Lara*, 983 N.E.2d 959 (Ill. 2012), the Illinois Supreme Court examined their formulation of the corpus delicti rule. While not precisely the language used in Missouri jurisprudence, the rule there is well-stated and worth admiring. “To avoid running afoul of the *corpus delicti* rule, the independent evidence need only *tend to show* the commission of a crime. It need not be so

standard is not that much different than the slight corroboration rule. Appellant believes, however, that the traditional rule should be maintained.

⁸ “It has been reported that there are at least 125 cases of proven false confessions, in which a person has confessed to a crime, only to have another proved guilty.”

Weeks v. State, 140 S.W.3d 39, 46, n.6 (Mo. banc 2004) (citation omitted).

strong that it alone proves the commission of the charged offense beyond a reasonable doubt. If the corroborating evidence is sufficient, it may be considered, together with the defendant’s confession, to determine if the State has sufficiently established the *corpus delicti* to support a conviction.” **Lara**, 983 N.E.2d at 964. As in Missouri, in Illinois, if there is evidence of corroborating circumstances which tend to prove the corpus delicti and correspond with the circumstances related in the confession, both may be considered in determining whether the corpus delicti is sufficiently proved. **Id.** at 967.

In **McMahon**, 548 N.W.2d 199, the Supreme Court of Michigan declined to replace the traditional corpus delicti doctrine with the trustworthiness standard. Michigan, like Missouri, used corpus delicti as a rule of admissibility rather than sufficiency. 548 N.W.2d at 201. Even if this Court were to change its standard, it would violate due process to apply that change to this appellant. See **LaRosa**, 293 P.3d at 579.

In any event, there is no evidence in this case to corroborate Sharnique’s statement – either “slight corroboration” or “independent evidence which tended to establish trustworthiness of confession” (**LaRosa**, 293 P.3d at 573). This is because, as the Court of Appeals found, there was no independent evidence to corroborate Sharnique’s statement. The Court noted, “Dr. Graham’s later revised opinion as to cause of death was directly attributed to Jones’s statement and, importantly, was not based on other medical evidence. The record does not point to any subsequently discovered medical evidence, or even Dr. Graham’s review of

prior medical records, which could serve as adequate corroboration of criminal agency.” *State v. Jones*, 2012 WL 4497968 (Mo. App., E.D., Filed Oct. 2, 2012), slip op. at 8.

No additional evidence was presented to corroborate Sharnique’s statement, which in itself hardly amounts to a confession (See Point I). For the reasons presented, she therefore respectfully requests that this Court reverse her convictions and discharge her, or in the alternative, remand for a new and fair trial.

CONCLUSION

For the reasons presented in this brief and her original brief, appellant respectfully requests that this Court reverse her convictions.

Respectfully submitted,

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Certificate of Compliance and Service

I, Ellen H. Flottman, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2007, in Times New Roman size 13 point font. Excluding the cover page, the signature block, and this certificate of compliance and service, the brief contains 1,841 words, which does not exceed the number of words allowed for a reply brief.

On this 16th day of September, 2013, an electronic copy of Appellant's Substitute Brief was served through the Missouri e-Filing System on Shaun Mackelprang, Assistant Attorney General, at Shaun.Mackelprang@ago.mo.gov.

/s/ Ellen H. Flottman

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